

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN BROWN,)	
)	NO. CIV 03-2372 GEB KJM
Plaintiff,)	
)	
v.)	ORDER*
)	
WAL-MART STORES, INC., ANGELA)	
WHITLOW, DON FILLA, and DOES)	
1 through 25, inclusive,)	
)	
Defendants.)	
_____)	

Defendants move for summary judgment on all of Plaintiff's claims under Federal Rule of Civil Procedure 56. Plaintiff opposes the motion.¹

BACKGROUND

Plaintiff Kevin Brown was a Personnel Coordinator for Claims Management Incorporated (CMI) beginning in April 2000, and was responsible for ensuring that CMI associates in the Sacramento office complied with Wal-Mart's employee policies. (Statement of Undisputed

* This motion was determined to be suitable for decision without oral argument. L.R. 78-230(h).

¹ Plaintiff's opposition was not timely filed. Plaintiff filed, concurrently with his opposition, an ex parte application for extension of time to file the opposition.

1 Facts ("SUF") ¶¶ 5, 10.)² In or during March 2003 or early April
 2 2003, Defendant Angela Whitlow, Plaintiff's immediate supervisor,
 3 received an anonymous typewritten letter which stated that Plaintiff
 4 had brought a friend into the office to solicit associates to purchase
 5 pirated satellite equipment, identifying Tom Van Deman and Flarry
 6 Henry as individuals who may have additional information about the
 7 incident. (SUF ¶¶ 7, 19, 20.) Ms. Whitlow then visited the CMI
 8 office in Sacramento, California, and asked Defendant Daniel Filla,
 9 President of CMI, to meet with her to discuss Plaintiff's potential
 10 wrongdoing and showed Mr. Filla the anonymous letter. (SUF ¶¶ 8, 21,
 11 22.) Ms. Whitlow and Mr. Filla then met with Mr. Van Deman and Mr.
 12 Henry, and another CMI employee, to inquire about whether Plaintiff
 13 had brought a friend of his into the workplace to offer satellite
 14 equipment. (SUF ¶¶ 24, 26, 31, 35.)

15 Ms. Whitlow and Mr. Filla then met with Plaintiff. (SUF ¶
 16 38.) Plaintiff admitted that he brought a friend, Marty Johnson, to
 17 the CMI office to meet with a CMI associate and discuss the purchase
 18 of satellite "black boxes." (SUF ¶ 39.) Ms. Whitlow asked Plaintiff
 19 if he believed that his actions were inappropriate as a personnel
 20 coordinator and Plaintiff told Ms. Whitlow that he believed his
 21 actions were an error in judgment. (SUF ¶¶ 41-42.) Mr. Filla told
 22 Plaintiff that they were concerned because Plaintiff had brought Mr.
 23 Johnson to the workplace and concluded it constituted gross
 24 misconduct/lack of integrity. (SUF ¶ 44.) Ms. Whitlow told Plaintiff
 25 that she was terminating him for gross misconduct/lack of integrity
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27 ² The facts are set forth in the movants' Statement of
 28 Undisputed Facts filed on February 18, 2005, and are supported by the
 affidavits of Kristin L. Oliveira, Angela Whitlow, and Daniel Filla,
 and supporting evidence, as required by Local Rule 56-260.

1 and completed Plaintiff's exit interview or termination notice on
2 April 16, 2003. (SUF ¶¶ 46-47.) Ms. Whitlow declares that at no time
3 did she consider Plaintiff's race or color in any decision to
4 terminate him. (SUF ¶ 61.)

5 STANDARD

6 Summary judgment is proper where the pleadings, depositions,
7 answers to interrogatories, affidavits, and admissions on file show
8 that there is no genuine issue as to any material fact, and the moving
9 party is entitled to judgment as a matter of law. Fed. R. Civ. P.
10 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In
11 considering a motion for summary judgment, the court must examine all
12 evidence in a light most favorable to the nonmovant, and draw all
13 reasonable inferences in that party's favor. Matsushita Elec. Indus.
14 Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citations
15 omitted). "[M]ere allegation and speculation do not create a factual
16 dispute for purposes of summary judgment." Nelson v. Pima Community
17 College, 83 F.3d 1075, 1081-82 (9th Cir. 1996) (citing Witherow v.
18 Paff, 52 F.3d 264, 266 (9th Cir. 1995)). The "purpose of summary
19 judgment is to 'pierce the pleadings and to assess the proof in order
20 to see whether there is a genuine need for trial.'" Id. (quoting
21 Advisory Committee Note to 1963 Amendment of Fed. Rule Civ. Proc.
22 56(e), 28 U.S.C. App., p.626).

23 DISCUSSION

24 First Claim: Breach of Contract

25 Defendants move for summary judgment on Plaintiff's breach
26 of contract claim. Defendants contend Plaintiff was an at-will
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28

1 employee and could be terminated at any time with or without cause.³
2 (Defs.' Mot. for Summ. J. at 8-9.) "[T]here is no evidence that
3 plaintiff had an express or implied, oral or written, contract of
4 employment with Wal-Mart." (Defs.' Mot. for Summ. J. at 9.)

5 "[California] Labor Code section 2922 provides that '[a]n
6 employment, having no specified term, may be terminated at the will of
7 either party on notice to the other.' An at-will employment may be
8 ended by either party 'at any time without cause,' for any or no
9 reason, and subject to no procedure except the statutory requirement
10 of notice." Guz v. Bechtel Nat'l, Inc., 24 Cal. 4th 317, 335 (2000).

11 Plaintiff has presented no evidence that Plaintiff's
12 employment was anything other than at-will employment.⁴ Plaintiff
13 signed an Offer Letter for the position as Personnel Coordinator,
14 accepting that his employment was at-will and he could be terminated
15 at any time and could terminate his own employment at any time. (SUF
16 ¶ 3.) Plaintiff's application for employment states that he would be
17 employed on an at-will basis. (SUF ¶ 4.) Plaintiff also signed an
18 acknowledgment of the Wal-Mart Associate Handbook, which provides that
19 all its store associates are employed at-will. (SUF ¶¶ 1-2.)

20 Since Plaintiff was an at-will employee, Defendants could
21 terminate Plaintiff at any time with or without cause. Therefore,
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24 ³ Defendants also contend that even if there was an implied
25 employment contract that Plaintiff would be discharged only for good
26 cause, Defendants have provided evidence that Plaintiff was terminated
27 for good cause. (Defs.' Mot. for Summ. J. at 12-17.) However, this
28 issue need not be decided since there is no evidence that Plaintiff
was anything other than an at-will employee.

⁴ In fact, Plaintiff did not even mention the portion of
Defendants' summary judgment motion on the breach of contract claim in
his opposition.

1 Defendants' motion for summary judgment on Plaintiff's breach of
2 contract claim is granted.

3 Second Claim: Breach of Implied Covenant of Good Faith and Fair
4 Dealing

5 Defendants also move for summary judgment on Plaintiff's
6 claim for breach of an implied covenant of good faith and fair
7 dealing. Defendants contend Plaintiff cannot establish the existence
8 of an employment contract between the parties, so Plaintiff cannot
9 establish a breach of an implied covenant of good faith and fair
10 dealing.⁵ (Defs.' Mot. for Summ. J. at 21-24.)

11 "[W]ith regard to an at-will employment relationship, breach
12 of the implied covenant cannot logically be based on a claim that a
13 discharge was made without good cause. If such an interpretation
14 applied, then all at-will contracts would be transmuted into contracts
15 requiring good cause for termination, and Labor Code section 2922
16 would be eviscerated." Foley v. Interactive Data Corp., 47 Cal. 3d
17 654, 699 n.39 (1988); see also Guz, 24 Cal. 4th at 350-52.

18 Since there is no evidence that Plaintiff was anything other
19 than an at-will employee, and there is no evidence of an agreement to
20 terminate only upon a showing of good cause, Defendants' motion for
21 summary judgment on Plaintiff's claim for breach of an implied
22 covenant of good faith and fair dealing is granted.⁶

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26 ⁵ Defendants also contend that their conduct did not violate
27 any covenant of good faith and fair dealing since there was good cause
28 for terminating Plaintiff. (Defs.' Mot. for Summ. J. at 23-30.) But,
this issue need not be decided here.

⁶ Plaintiff did not mention this claim in his opposition.

1 Third Claim: Race Discrimination

2 Defendants move for summary judgment on Plaintiff's racial
3 discrimination claim, arguing since Defendants terminated Plaintiff
4 for a legitimate and lawful reason, Plaintiff cannot establish a
5 racial discrimination claim. (Defs.' Mot. for Summ. J. at 24-29.)

6 Plaintiff argues a prima facie case of racial discrimination
7 exists since "Plaintiff was treated differently than the white male
8 co-worker and by the fact that his actions were deemed gross
9 misconduct." (Pl.'s Opp'n to Mot. for Summ. J. at 3.) Plaintiff
10 argues that Defendants cannot establish a legitimate non-
11 discriminatory reason for his termination, and that the rationale
12 provided by Defendants was merely pretextual.

13 The basis for Plaintiff's race discrimination claim is that
14 Plaintiff was treated differently because of his race since he was
15 terminated for gross misconduct for inviting Mr. Johnson into the CMI
16 office, while Mr. Van Deman, a white employee, was not even
17 investigated, even though Mr. Van Deman allegedly initiated all
18 efforts with requesting illegal satellite equipment and allegedly
19 purchased the equipment. (Pl.'s Separate Statement of Disputed Facts
20 ¶¶ 73, 76, 85.) After Plaintiff was discharged, he told Mr. Filla
21 that Mr. Van Deman purchased the satellite equipment from Mr. Johnson.
22 (SUF ¶ 63.) Mr. Filla did not investigate the discrepancy between Mr.
23 Van Deman's representation that he did not purchase the satellite
24 equipment and Plaintiff's statement that Mr. Van Deman indeed
25 purchased the equipment. (SUF ¶ 64.) However, Mr. Filla declares
26 that the decision not to investigate whether Mr. Van Deman purchased
27 the satellite equipment was not based on Mr. Van Deman's or
28 Plaintiff's race or color. (SUF ¶ 65.)

1 Plaintiff also contends that "by categorizing Plaintiff's
2 actions as gross misconduct, Defendants were able to shield themselves
3 from conducting a fair and objective investigation" since an employee
4 found to have engaged in gross misconduct can be terminated without
5 "coaching for improvement" (written or oral counseling). (Pl.'s Opp'n
6 to Mot. for Summ. J. at 3.)

7 However, Defendants have declared that Plaintiff was
8 terminated because of his poor judgment in inviting Mr. Johnson into
9 the CMI office, and that the termination was not because of his race.
10 Plaintiff only speculates that he was terminated because of his race
11 but has shown no evidence that Plaintiff's misconduct was merely a
12 pretext for discrimination. Therefore, Defendants' motion for summary
13 judgment on Plaintiff's racial discrimination claim is granted.

14 Fourth Claim: Wrongful Termination in Violation of Public Policy

15 Defendants contend Plaintiff has no evidence he was
16 wrongfully discharged in violation of any public policy. (Defs.' Mot.
17 for Summ. J. at 29-31.) Plaintiff counters that "Plaintiff's
18 termination came shortly after he clearly advocated payment to
19 employees that had worked overtime. The termination of Plaintiff was
20 such that one could reasonably conclude that Defendants were laying in
21 wait for an opportunity to terminate Plaintiff for his involvement in
22 such advocacy." (Pl.'s Opp'n to Mot. for Summ. J. at 4.)

23 "[A]part from the terms of an express or implied employment
24 contract, an employer has no right to terminate employment for a
25 reason that contravenes fundamental public policy as expressed in a
26 constitutional or statutory provision." Turner v. Anheuser-Busch,
27 Inc., 7 Cal. 4th 1238, 1251-52 (1994). Defendants, however, have
28 established the reason for Plaintiff's termination. Plaintiff only

1 speculates that he was terminated for another reason. Therefore,
2 Defendants' motion for summary judgment on this claim is granted.

3 Fifth Claim: Intentional Infliction of Emotional Distress

4 Defendants contend Plaintiff has not provided evidence that
5 Defendants intentionally caused Plaintiff any emotional distress.
6 (Defs.' Mot. for Summ. J. at 31-32.) Since the record is devoid of
7 such evidence, Plaintiff has not countered Defendants' showing that
8 they are entitled to summary judgment on this claim. Therefore,
9 Defendants' motion is granted.⁷

10 CONCLUSION

11 For the stated reasons, summary judgment is entered in favor
12 of Defendants and against Plaintiff. The Clerk of Court shall enter
13 judgment in favor of Defendants.

14 IT IS SO ORDERED.

15 Dated: May 4, 2005

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17 /s/ Garland E. Burrell, Jr.
18 GARLAND E. BURRELL, JR.
19 United States District Judge
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28 ⁷ Plaintiff did not mention this claim in his opposition.